# A FEW WORDS

IN

# VINDICATION OF THE ACTION

OF THE

# Court of Bishops,

CONVENED AT CAMDEN, N. J.,

SEPTEMBER, 1853.

BY

ALFRED LEE,

BISHOP OF THE DIOCESE OF DELAWARE.

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# THE ACTION

OF THE

# COURT OF BISHOPS.

The members of the late Episcopal Court at Camden have not evinced any particular anxiety to obtrude themselves upon the public, in defence of the decree which was then pronounced. Their silence on this subject is not to be attributed to the belief that their action met the universal and unqualified approval of the Church. They did not, it is presumed, expect at the time that such would be the effect. They were prepared for some degree of disappointment on the part of many who were anxiously watching their proceedings. And their decision has been the subject, in some quarters, of no very friendly or flattering remark. Neither, in the opinion of the writer, is their neglect to set forth more at large, than in the formal decree, the motives by which they were influenced, to be attributed to indifference as to the opinion that might be formed of their action by an enlightened community, and a deeply interested Church. Such indifference would ill become men to whom character is more precious than aught, except the approval of God, and of their own consciences. To those occupying the position in which they have been placed, it is emphatically true, that "a good name is better than riches." Their influence for good is inseparably connected with the confidence reposed by their fellowmen in their integrity and purity; and they must, of course, be deeply concerned that this confidence should not be impaired. But the writer would venture to suggest that this silence is rather attributable to the conviction of the members of the Court, that the matured and dispassionate verdict of the community would sustain and confirm their conclusion; that when the difficulties of their position were understood, and a candid estimate formed of what would have been the probable results of a different action, there would be a general sentiment of acquiescence in their course, and a justification of their motives. They were not so troubled with misgivings as to the propriety of their decree, as to feel it necessary to hasten before the public with explanations and vindications. They were content to wait the safer and slower verdict of mature

consideration. Having done what they thought right and allowable, they were satisfied to leave their action open to the examination of the world, in the belief that it would eventually be acceptable to the great body of the unprejudiced, sober-minded and peace-loving members of their Communion. They might, it is humbly suggested, count upon the candid and kind consideration of their brethren of the clergy and laity, and suppose that those who had known them, long and intimately, would give them credit for honesty, and purity of intention, until the contrary was shown. The members of the Court were men of public character. They had been before the community and the Church for years, under circumstances well-calculated to bring out their principles and show what manner of men they were. A considerable number of them had been prominent in the exercise of the discipline of the Church upon brethren occupying the very highest ecclesiastical positions, and had incurred thereby no small measure of abuse and obloquy. Their lot had been cast for the last ten or fifteen years in no peaceful times for the Church; and, amid unwonted agitations, they had been exposed to a somewhat severe ordeal of faith and character. Might they not fairly presume that those who had sustained and sympathized with them in former conflicts, would be slow to attribute to them, in the present case, forgetfulness of their principles or betrayal of their trust?

Inasmuch, moreover, as the decree of the Court was unanimous, there was no opportunity furnished for stating the views and grounds of action of individual members, as in the case of divided judgment, or of dissent from the decision of the majority. The Court spoke judicially by its decree. No single judge had any authority to speak for the Court, and, inasmuch as he concurred in its action, had no right to put on the record the reasons for his own particular concurrence. Since the adjournment of the Court, no one was authorized or empowered to speak for his brethren, neither did any Bishop feel forward to appear as the volunteer advocate of a decision in which his own share was scarcely one-twentieth. The members of the Court were glad to return to other and more pressing duties. The General Convention, with its absorbing claims, followed almost immediately, and the neglected interests of dioceses and parishes have since left them very little of leisure or thought for a painful and unpleasant subject. This is presumed to be the explanation of the silence of the judges of that Court, in reference to their decision. To explain or vindicate it was not es-

pecially the business of any of them, and they were not unwilling to dismiss from their minds a matter that had always been unwelcome. Nor were they greatly disquieted as to the opinion which the community generally would settle upon. Had they been more anxious or more doubtful, they would have been more eager to defend themselves before the public. If any of their highly-respected brethren of the clergy or laity were disappointed or dissatisfied, it was of course to them a subject of regret, but they relied, somewhat confidently, upon the subsidence of excitement and more deliberate consideration.

The question may be very promptly determined by an individual invested with no especial responsibility, and not chargeable with any of the consequences of a decision, that the Court should at once have proceeded to a trial, or that, in the event of a majority deciding not to proceed, the minority should have protested to the last against such a decision. But as the question was presented to the minds of the appointed judges, upon whom lay the whole burden of accountability, and who could not but look forward to the probable results of their procedure, it was exceedingly grave and difficult.

The writer of the present statement was not particularly concerned in the arrangement of the case which was effected at Camden. Having been one of the Court at Burlington, and having put on the record the reasons of his dissent from the decree then pronounced, he was not placed upon the committee who digested and proposed to the recent Court the preamble and orders which they adopted. His position at Camden was rather that of an acquiescent than an actor. But he is not disposed on this account to shrink from his full and proper share of responsibility. He has always recognised the principle that the official conduct of the Bishops of the Church is open to the freest examination. They ought to sanction nothing which they are not prepared to maintain. And when they are misapprehended or misrepresented upon matters of importance and general interest, they ought with candor to state the motives which influenced their own conduct, whether those motives do or do not commend themselves to all to whom they may be submitted. He had hoped that some of his brethren, more competent than himself to present the subject, and who might have appended to it names of greater weight, would have addressed the Church. But this not having been done, he feels it due to himself to make public the views of the case upon which he individually acted.

The Court was influenced in the final decision of the case by various considerations, recited in the preamble of their order dismissing the presentment. Some of these reasons weighed more forcibly upon one mind, and others upon another; but all combined produced convictions so strong as to lead to the unexpected and remarkable result of an unanimous action.

The first considerations referred to in the preamble are "serious embarrassments thrown in the way of the action of this Court—first, by the postponement of the trial of the original presentment, and afterwards by the decree and orders of the Court of Bishops, assembled in October, 1852." The ordinary course of judicial action had become embarrassed, in the first place, by the postponement of the time of trial by the late venerable Bishop Chase. This proceeding, however well intended by that respected and lamented father in our Church, was wholly unwarranted and uncanonical, and gave rise to difficulties from which the case was never afterwards relieved. On this account the presenting Bishops made a second presentment of the Bishop of New Jersey, thus virtually superseding the first. When the court met in 1852, it was urged, on the part of the Respondent, that the action of the Convention of New Jersey was prior to that of the three Bishops, inasmuch as it anticipated the date of the second presentment. The Court at Burlington, consisting of but fourteen Bishops, (many others having been prevented from attending by the postponement of the trial,) sustained, by a vote of eight to six, the objection thus made, and, by certain orders, which it is not necessary here to recapitulate, acquiesced in the conclusion of the Convention of New Jersey, respecting many of the specifications, and referred the ascertainment of the fact, whether there was or was not ground for presentment in the remaining charges, to the same Convention. The committees appointed by that Convention subsequently reported that such grounds did not exist, and the Convention accepted and sanctioned their report. When the Court assembled, in September last, the decision of the previous Court, and the consequent action of the Convention of New Jersey, were pleaded, in fact if not in form, as a bar to the presentment, inasmuch as the charges, contained in the third presentment, were virtually the same as those embraced in the second. Upon the validity of this argument, the Court evidently was greatly divided. The opinion of the six judges who formed the minority of the former Court was, it is presumed, unchanged as to the decision made in October, 1852. They had seen

no reason to vary their views of the nature of that decision, or to modify in any manner the dissent which they expressed at the time. Had precisely the same question been again presented, they would have given the same answer. But the question was not now the same; it was materially changed. Here was a decision of a Court of competent jurisdiction, (of the same canonical tribunal, in fact,) pleaded by the Respondent. If under that decision he had acquired any rights, although the decision itself might be erroneous, he might with reason claim that those rights be respected. It was strongly urged that the effect of that decision, indicating to the Respondent and his diocese a certain line of conduct, and of their procedure consequent thereupon, was and ought to be held as a final disposition of the case, and that the Respondent could not be again put in jeopardy upon the same charges. It was in effect as if the very Court, which had made the previous order, were called upon to regard its own action, and respect concessions which it had itself granted.

Upon the weight to be given to this objection, there was, as before remarked, a considerable diversity of opinion in the minds of members of the Court. A number of the judges appeared prepared to sustain it. Others, among whom was the writer of this statement, had it been brought to a vote, would have overruled it. Yet even they could not but feel, in a greater or less degree, the force of the objection. The fact that it appeared so weighty to many of their brethren, and especially to those among them who had not been present at the former proceeding, and were wholly uncommitted thereto, could not but have its influence with them. To proceed to so important and responsible an act as the trial, in the face of grave objections, felt to some extent by all the Court, and by many deemed insuperable, could not but be contemplated with the utmost reluctance. So serious a matter as the possible result of a trial, the taking away from a Bishop of the Church, and one strongly sustained by his own diocese, of his office, character, means of usefulness, and support, required the way to be plain and unobstructed. The Episcopal Court then assembled was, under the existing law of the church, a Court without appeal. If it erred in its procedure or decision, there were no means provided of rectifying the error, or remedying the evils that might ensue. The consequences of their action would be fixed and irremediable. It was of the greatest moment that the verdict and sentence of the Court, if such should be rendered and pronounced, should be liable to no

just exception, before the Church, or the tribunals of civil justice. That it would be subjected to the most searching examination was palpable. The Court must be prepared to abide their decision before the civil tribunals, if questions, resulting therefrom, should become the subject of litigation, as well as before the Church, of which they were members and pastors. The gravity of the difficulties thus interposed was so deeply felt, that a proposition was introduced, on the eleventh day of the session, that the case be stated, with the consent of the parties, and laid before three of the most eminent jurists of the land, for their opinion on the legal objections that had been raised. The discussion of this proposition occupied the greater part of the day; but before a vote was taken thereupon, a substitute was proposed, and adopted by the Court, as follows:

"*Ordered*, that Bishops Brownell, Otey, Polk, Elliott, Freeman, Williams, Wainwright, (being the Bishops who were not members of the Court assembled in October last for the trial of Bishop Doane,) be a committee to confer with impartial counsel, learned in the law, how far the action of the Court then held ought to influence and control our present decisions, and also to confer with the presenting Bishops and Respondent, to ascertain whether they cannot come to some understanding which shall be mutually satisfactory, and also fully answer the purposes of justice; and that, in order to give them opportunity to discharge this duty and prepare a report, this Court does now adjourn until Thursday next."

The object of this action was twofold—first, to obtain that aid from legal science which might assist the Court in coming to a right conclusion upon the question then before them; secondly, to ascertain, by conference with the presenting Bishops and Respondent, whether an understanding might be arrived at which would satisfactorily terminate the case. It is humbly submitted that this step was, under the circumstances, wise and justifiable. It discovered the difficulties under which the court labored, and their desire to effect, if possible, their removal. It showed a disinclination on their part to precipitate action, or recklessly to disregard the real obstacles in their way.

In the view of the undersigned, the main bearing of the latter clause of the order was to discover if any acknowledgment of misconduct could be obtained from the Respondent, that would satisfy the minds of the presenting Bishops, and enable them, consistently with their views of duty, to withdraw the prosecution. It has been

said that this was an extraordinary step on the part of judges. It cannot be claimed that it was strictly a judicial act. But it should be remembered that the judges were not an ordinary civil tribunal, deciding an every-day case of property or wrong. They were also members and pastors of the Church of Christ. They were deeply interested, as every member of the Church must always be, in its harmony and peace. They were placed in a position to feel, more keenly and painfully than others, the evils that ensue from discord and division. They foresaw, as the result of a trial, a fearful prospect of strife and bitterness; the Church distracted, for years, with a conflict of the most irritating personal character; and a flame of discord kindled that would not speedily be quenched. It was apparent that the Court could not go into a trial of the case with any thing like unanimity—nay, that such a step could be carried, if at all, by a majority exceedingly small. A trial under such circumstances, and before a Court destitute of the powers of civil tribunals, would be clogged at every step with great impediments, and little satisfaction could be expected as the result. It was very painful to contemplate a verdict of condemnation or acquittal passed by a bare majority. Diversity of opinion among the judges would greatly detract from the moral weight of the decision. And if it could be alleged that the variance of opinion, on the merits of the case, corresponded with their respective opinions on theological and ecclesiastical points, then a most plausible pretext would be furnished for the dissatisfied to impute the decision to party preferences and associations. Recent painful experience had plainly shown the certainty of such a result, as well as its unhappy consequences upon the peace and prosperity of our Church.

Such then was apparently the prospect in the alternative of a trial—a Court divided in its inception and progress, a constant and desperate struggle as it proceeded, a greatly divided verdict, a result wanting in moral force, and liable, whether justly or unjustly, to the imputation of being influenced by party feeling—and, beyond that, a most harassing and interminable conflict, agitating and convulsing the Church, and, not improbably, making its general and diocesan Conventions arenas of embittered contention. It is not claimed that these and similar considerations would be sufficient to warrant a Court in refusing to try a case, when no other reasonable objections could be urged against proceeding, and the trial was demanded by the prosecutors. In the reasons for his dissent from the Burlington decision, the undersigned stated his

decided conviction that the apprehended consequences of a trial would not justify a Court in refusing to proceed; and he has no wish to retract any argument or opinion there expressed. But in the peculiar circumstances of the case before them, encountered by the serious obstacle of the former decree, he did and does conceive it justifiable for the Court to pause, and inquire whether these foreseen evils were inevitable. Must the Church be so deeply afflicted for years to come? Must it be exposed to the hazard of being rent in pieces by internal dissensions? Must its future be one of division and discord, brother arrayed against brother, and Bishop against Bishop, in fraternal strife? If the Respondent could be induced to make a candid acknowledgment of those faults which had given occasion to this prosecution, the presenting Bishops might feel themselves at liberty to withdraw their presentment. In this way the honor of the Church might be vindicated, and its peace preserved. Yet it was perhaps too much to expect from persons in their position, charged as public prosecutors with the maintenance of the laws of the Church, having taken so public a stand as accusers, desirous to bring forward their proofs and evidence, having been exposed to much unjust obloquy in the conscientious discharge of what they deemed a painful duty—it was probably too much to expect that they should consent to such a withdrawal. The committee reported, accordingly, that "they found that no understanding could be come to of the sort contemplated in the order of the Court, the presenting Bishops feeling themselves unable to withdraw their presentment, under any such acknowledgment of error as the Respondent would be willing to make." They go on, however, to state that "they conferred with the Respondent, who expressed himself quite ready to acknowledge, as he had already done to some extent in open Court, such error as his conscience accused him of," the result of which conference the committee had "embodied in the preamble and orders which they submitted as the basis of a settlement of this vexed and painful question."

The most important feature of the report of this committee, and that which principally led to the result, was the acknowledgment made by the Respondent, as follows:

"The undersigned, in prosecuting his plans of Christian education, in connexion with St. Mary's Hall and Burlington College, found that the expenses of the enterprise greatly exceeded his calculations; while the assistance, on which he had confidently relied, perhaps too sanguinely, fell altogether short of what he deemed his reasonable expectations. In this condition of things, being en-

tirely left alone, and without advice, every step which he advanced involved him more and more deeply in pecuniary embarrassments. He admits that he made representations which, at the time, he believed to be correct, but many of which turned out in the event to be erroneous. He was also led, by his too confident reliance on anticipated aid, to make promises which he fully expected to perform; but which, experience has taught him, were far too strongly expressed. He was also induced, for the sake of obtaining money to meet his necessities, to resort to methods, by the payment of exorbitant interest on loans, which he did not suppose were in contravention of the law, and which common usage seemed to him to justify. He also, in entire confidence in his ability to replace them, made use of certain trust funds, in a way which he deeply regrets, and, although they have long been perfectly secured, does not now justify.

The embarrassments here referred to were followed by a long and well nigh fatal illness, which, withdrawing him entirely from the business which he had carried on alone, was mainly instrumental in the entire failure of his pecuniary affairs. The perplexity arising from this failure, with the protracted infirmity which followed his sickness, made him liable to many errors and mistakes which might easily bear the appearance of intentional misrepresentations. In connexion with the assignment of his property, he set his name under oath to an inventory of his goods, and also to a list of his debts, which he believed to be correct—an act which, he grieves to find, has given rise to an impression in the minds of some that he exhibited an insensibility to the awful sanctions of the oath of a Christian man. But, while he laments the impression, he declares that this act was only done under legal advice, and in firm conviction of its correctness.

Some time after his recovery from the illness above alluded to, but while he was still in the midst of his perplexities, smarting under his heavy disappointments, and wounded by the imputations to which in some quarters he was subjected, the letter of the three Bishops came to him. He has no disposition to ascribe to them any other than just and proper motives in thus addressing him. But, at the time when he received the communication, he viewed it otherwise, and under the strong excitement of the moment penned a pamphlet, parts of which he does not now justify, and expressions in which, in regard to those brethren, he deeply regrets.

In reference to his indebtedness, he now renews the declaration of intention which he has constantly made, and has acted on to the utmost of his ability thus far, to devote his means, efforts, and influence, in dependence upon God's blessing, to the payment, principal and interest, of every just demand against him, an expectation which there is reasonable hope of having fulfilled, since a committee of the trustees and friends of Burlington College, by whom both institutions are now carried on, have undertaken an enterprise, which is nearly completed, to discharge the whole of the mortgage debt, and thus secure the property at Riverside and St. Mary's Hall, with that of Burlington College, to the Church forever for the purpose of Christian education. And this done, the trustees have further agreed to appropriate during his life the surplus income of both institutions to the liquidation of all his other debts in carrying on the said institutions.

That in the course of all these transactions human infirmity may have led him into many errors he deeply feels. He does not wish to justify or excuse them. If scandal to the Church, or injury to the cause of Christ, have arisen from them, they are occasion to him of mortification and regret. For these things, in all humility and sorrow, before God and man, he has always felt himself liable to, and willing to receive, the friendly reproofs of his brethren in Christ Jesus, and especially of the Bishops of this Church.

G. W. Doane,
Bishop of New Jersey."

The reading of this paper produced upon the Court a marked and favorable impression. If their accused brother were willing, in the spirit of penitence, to confess his faults, and make reparation to those who had suffered by them, might not his judges, as Christian brethren and Bishops, respond to this appeal in kindness and forbearance? Upon this statement the Court was disposed to put a candid and generous construction. It purported to be an acknowledgment by the Respondent of "such error as his conscience accused him of." As such the Court received it. No minute comparison was instituted between the several particulars of the acknowledgment, and the various specifications of the presentment. The Court did not inquire to what extent each particular of the accusation was noticed in the admission. They took it as a whole, and acted upon it as a sincere and candid representation of Bishop Doane's own convictions of past error and misconduct. A ray of cheering light broke upon them through the hitherto dark and lowering sky, and they feared to extinguish it.

The Court felt that the above was a large and painful admission for the Respondent to have made. Some of the acts charged against him it acknowledged. It was accompanied, indeed, with a denial on the part of the Respondent of intentional fraud. It stated such exculpatory considerations as seemed to him at the time to excuse his conduct. It dwelt upon the various difficulties which he had encountered in his extensive educational plans, from the failure of others to fulfil expectations which he deemed reasonable, and assurances in which he had placed confidence, and from the breaking down of his own health in the height of his embarrassments.

But would it have been the part of equity and Christian kindness in the Court to have refused him permission to adduce, in connexion with this mortifying acknowledgment, any mitigating circumstances? Must they decline to listen to any suggestions that

seemed to extenuate the acts charged against him? The main thing, indeed, in this paper, was his admission of certain facts. All that could be proved by evidence adduced to any specification would be the fact charged in that specification. But the degree of blame and criminality involved in a particular act would depend, *in foro conscientiæ*, on many circumstances, and very materially on the intentions with which it was committed. The same act might be an imprudence or a crime, according to the intent of the actor. In the opinion of the writer at the time, the paper subscribed by Bishop Doane was equivalent to a plea of guilty, as to several charges in the presentment. But the Court, in receiving this acknowledgment, could not refuse the Respondent the benefit of stating such considerations as he might wish to urge in palliation of his conduct. The Respondent was not willing to plead guilty, nakedly and unqualifiedly. He was ready to admit the truth of certain acts complained of, but he claimed the privilege, in so doing, to represent his own views and intentions, and to disavow criminal purposes and fraudulent designs. How far these acts were excused by the attendant circumstances, is a question upon which the opinion of many others might vary from his own. But certainly it would have been a hard thing for the Court to have refused to listen to them, or to have declined to allow them any weight whatever in their own estimate of the matters confessed.

In this paper, the Respondent also expressed his regret for harsh expressions, in reference to the course of the presenting Bishops, which had been published in his pamphlet, penned at the time of receiving their first communication, under strong excitement, and disclaimed any present disposition to impute to them other than just and proper motives in thus addressing him.

He declared his intention to devote his means, efforts, and influence, in dependence upon God's blessing, to the payment, principal and interest, of every just demand against him, and referred to a plan then on foot for raising a large sum of money, as furnishing reasonable hope of fulfilling this purpose.

He moreover disclaimed the wish to justify or excuse any errors into which he might have been led. "If scandal to the Church and injury to the cause of Christ have arisen from them, they are occasion to him of mortification and regret. For these things, in all humility and sorrow, before God and man, he has always felt himself liable to, and willing to receive, the friendly reproofs of his brethren in Christ Jesus, and especially, the Bishops of the Church."

In this paper, then, was laid before the Court an admission of certain acts of misconduct charged against the Respondent. And this admission was accompanied with expressions of humility, sorrow and regret. The introduction of exculpatory considerations does not affect these important points. To the latter the Court might attach what weight they considered them entitled to, and the Church and the community at large will do the same. But to argue that they invalidate the acknowledgment to which they are appended, and therefore render it an insufficient basis for the action of the Court, is wholly unreasonable. The facts are one thing—the qualifying considerations are another. The Court, by examination of witnesses, could only arrive at the facts. But, even if proved, the Respondent would not be precluded from urging in defence any thing that could go to palliate or excuse his conduct; and all such arguments would have their weight, even in case of conviction, in determining the sentence.

When the above report of the committee was laid before the Court, the presenting Bishops claimed the right of making an argument against the adoption of its recommendations. But, after a somewhat protracted private conference with the committee, they waived this right, and presented that statement of their legal position which is published in the record of the Court. This waiver was not without effect—more, perhaps, than they themselves meant or apprehended.

The report and orders proposed were then adopted by an unanimous vote.

Doubtless different members of the Court were actuated by different motives in coming to this conclusion. It was not the disposition of the case which many or most of the judges would have preferred. It was open to opposite objections from those, respectively, who had taken opposite views during the previous history of the case. It was the result of mutual concession, and the expression of the very earnest desire of all the Bishops to maintain, if possible without the sacrifice of principle, the oneness and harmony of the Church, and to set forwards, as much as in them lay, quietness, peace and love among Christian people, and especially among those committed to their charge. As one concurring in this action, and willing to bear my proper share of the responsibility attaching thereto, I was influenced in the final vote by the following considerations:

1. The necessity was thus avoided of deciding upon the ques-

tion of the degree of weight to be attached to the action of the Court held in October, 1852. For the present Court to have unqualifiedly confirmed that decision would have been to my mind a very lamentable thing. It would have sanctioned a contravention of the law of 1844, a virtual denial of justice, a nullification of rights granted to the Bishops, a prostration of the judicial authority of the Church at the feet of a diocesan Convention, a heavy blow struck at our present orderly and beautiful confederation, at our oneness, strength and discipline as a national Church.

Yet, on the other hand, to have so overruled it as to disregard wholly its effect upon the position of the Respondent, might have appeared like a disregard of the plighted faith of the Church, as represented by the former Court, and the infringement of a privilege then conveyed to him by a solemn decision. Be it that the decision itself was erroneous; does that conclusion quite invalidate the Respondent's claim that the privileges which it had given him should be respected? He and his Convention had complied with the terms of that decree. They came before the Court to present the result of an inquiry which the previous Court had ordered and sanctioned. Now shall the present Court wholly ignore or disavow the action of the former? Shall it not merely repudiate the principle of the decision, but go on and strip the Respondent of any benefit that had enured to him from such decision? The Respondent comes before the same tribunal, the Bishops of the Protestant Episcopal Church. He argues: 'Relying upon your former decision, I have acted as you prescribed. Here is the evidence of my conformity to your directions. Let me not be the sufferer. The responsibility of that decision was yours, and not mine; and since I have conformed thereto, I claim that you cannot disregard it.'

Now it would be indeed a blot upon the fair fame of the Church, if she should appear indifferent to the sacredness of her plighted faith. It would be a sad reproach, if no confidence could be reposed in her decisions, and the most precious rights of her ministers might be placed at the mercy of an accidental majority.

For the interests of truth and justice, indeed, it is important that the principle of an erroneous decision should not be permanently established. But, in doing this, it is not less important that no just imputation should attach to the highest judicial tribunal of the Church, of forfeiting its own pledges, and taking back to-day what it had given yesterday. The decision of the court at Camden avoided each alternative of this dilemma. The former action was

overruled, so far as it was an erroneous interpretation of the law. The correct principle was established, that a diocesan Convention cannot properly claim to interpose between presenting Bishops, exercising their canonical right, and the appointed tribunal. Thus the administration of justice in the Church was guarded against future interruption on account of the precedent of the decree of October, 1852. At the same time, there was no withdrawal from Bishop Doane of any right that he might possibly have acquired under that decree. The decision of the former Court, so far as legal principle was concerned, was overruled; so far as the Respondent was individually interested, its concessions were not retracted or violated.

2. My concurrence in the decision at Camden was mainly secured by the acknowledgments of Bishop Doane above recited, and the expressions of regret and sorrow for the past with which they were accompanied. In this statement I was willing to repose confidence, to receive it as an act of reparation and contrition, and to afford a brother, to whom the large majority of his diocese appeared to cling with unwavering confidence and affection, the fullest opportunity of retrieving his errors, and regaining the confidence of the Church at large.

3. It is a well-known maxim of law that, where there is reasonable doubt on the mind of a juror, in a criminal case, the accused is entitled to the benefit thereof. The case presented to the court at Camden was embarrassed by doubts of a grave and serious character. Was it not their duty to give to the Respondent the benefit of those doubts? Finding great difficulty in deciding which was the proper course to pursue, were they not justified in allowing this consideration to turn the balance?

4. They were exercising as Bishops the discipline of the Church of Christ, and could not forget the injunction in the consecration office: "Be so merciful, that ye be not too remiss; so minister discipline, *that ye forget not mercy.*" Neither could they shut out from their minds the still more sacred injunctions of Holy Writ of the same tenor: "Brethren, if a man be overtaken with a fault, ye, which are spiritual, restore such an one in the spirit of meekness, considering thyself lest thou also be tempted." The Respondent urged very strongly upon his brethren of the Court that, during the years wherein these alleged acts of misconduct occurred, the rumours of which were extensively circulated in the public prints, none of them had ever admonished him in private of the scandal

that was said to have been thereby caused, and the appeal was not unfelt.

5. With regard to the alleged violation of law, by an extra-judicial proceeding, it is submitted, that there may reasonably be conceded, to an ecclesiastical (I do not say an episcopal) Court, a measure of discretion beyond that ordinarily exercised by civil tribunals. The differences between the two are great and manifest. The civil tribunal is composed of judges who are entirely devoted to this function, and who have been trained for it by a long course of previous study and practice. The administration of justice is the business of their lives. They are in constant session. They have all the light which can be thrown upon disputed points by the arguments of able counsel. They have the assistance of a jury to determine questions of fact. They are sustained in their proceedings by the whole power of the State; can constrain the attendance of witnesses; compel them to testify, no matter how reluctant; require the production of documents; punish contempts; and enforce their decisions with a strong hand. They have the aid of a vast amount of recognised principles and adjudged cases to guide them to a right conclusion.

Now how entirely different the case of an ecclesiastical Court! The judges are not trained for such a function. If any of them should chance to have had a legal education, it is accidental, and without the view of the church legislation constituting them judges. They are not familiar with practice. Their assemblage for judicial purposes is a rare event. The time occupied for a trial must be taken from the pressing and more congenial occupations of a very different sphere of action. It summons them to duties quite foreign to their usual avocations. They are almost wholly destitute of precedents in their own line; and to search for them in the bulky libraries of the civil or common law, would be as laborious as unprofitable. They have no opportunity, under our present canon, of hearing counsel, unless the accused choose to introduce them. They are without power to compel testimony; the witnesses must be volunteers. And if material witnesses are unwilling to testify, the Court is powerless. The judges must decide the case according to the evidence brought before them in Court, and yet the very evidence, indispensable to a right decision, may be wilfully withheld. And when their decision is pronounced, its effect very much depends upon its consonance with public opinion, since they could with difficulty enforce a sentence, however just and righteous, if the ac-

cused should be contumacious, and any considerable portion of the Church should sympathize with him.

Such being the comparative impotence of ecclesiastical tribunals, is it reasonable that they should be subjected in their proceedings to inexorable necessity? Destitute of the authority of civil courts, must they be as stringently tied to a prescribed routine? Where there is so little power, should there not be allowed more liberty? And since cases may occur, wherein, without fault of theirs, a trial could only result in disappointment and disaster, and the object may be otherwise secured, may they not be permitted to take a previous survey of the circumstances of a peculiar case, estimate the probability of reaching the end proposed, and then determine whether a trial should or should not be had? No special claim is here made in behalf of inherent episcopal powers. But there is claimed for every ecclesiastical tribunal, whether composed of Bishops, Presbyters, or laymen, some enlargement of discretion beyond what would be conceded to an ordinary tribunal. The cases before them will usually be of a more delicate character, personal rather than pecuniary, affecting mainly character, influence, reputation, domestic peace and privacy, and the interests of religion, and the Church of Christ. Publicity is far more injurious, scandal more rife, suspicion more alert, and calumny more censorious. The ascertainment of truth is indispensable to a correct decision, and yet the means of ascertaining truth are restricted or denied. It is exceedingly doubtful whether the Court can procure the evidence on which to base a right decision. And if the question be one on which the different sections of the Church have taken opposite ground, then it is morally certain that the decision, even if it be right, will not satisfy a large proportion of those whom it may affect. Now while all these reasons do not justify ecclesiastical judges in shrinking from manifest duty, they do, I conceive, entitle them to a fuller latitude as to the disposal of a case in its different stages. They may be, and I think must be, allowed to survey the whole ground before them, contemplate the issues of their action in this or that direction, and have some liberty of determining as to the expediency and necessity of a trial in peculiar and doubtful cases. Against the abuse of such discretion, there is, I apprehend, a safeguard in the amenability of every such body to the great bar of public opinion, and in the legislative authority of the Church. The recent Court was very solemnly warned that their own trial, before the Church and the community, would follow immediately

upon their decision. The temper of the times, both within and without our Church, is any thing but favourable to unregulated or arbitrary authority. This is no period for the encroachments and graspings of undefined prerogative. In his place in the legislative councils of the Church, the undersigned has always been opposed to action by the Bishops of the Protestant Episcopal Church on the ground of inherent powers, unrecognised by express law. He believes that the just influence of the Bishops will be far better maintained by their scrupulously confining themselves within prescribed legal limits. This principle was never more strongly maintained, in both houses of the General Convention, than during the recent session. The shadowy claim of mere prerogative was effectually put to flight, and there is little ground for apprehension that it can ever be reasserted with success. In the jealous vigilance that watches, eagle-eyed, any reappearance of this unpopular pretence of inherent episcopal right, there is a sufficient safeguard against its encroachments. And to this corrective may, it is submitted, be safely left the exercise of discretion by judicial tribunals. If all such latitude be denied them, and they be constrained, while destitute of all the power of secular judges, to pursue the same undeviating course, it may become with many a strong conviction that they must decline altogether a duty so responsible, so ungrateful, and so impracticable.

6. Let me be permitted to add another word respecting an imputation that has been cast upon the recent Court, on account of their not inflicting any censure or admonition upon the Bishop of New Jersey, after receiving the above-mentioned acknowledgments. To infer from this omission that the acts confessed were not, in the judgment of the Court, deserving of censure, would be altogether unwarranted. The Respondent himself declined to justify many of these acts, virtually admitted that scandal had thence arisen, and declared it to be cause to himself of mortification and regret. So far as the writer was concerned, it seemed to him that a formal admonition would have scarcely added any thing to the burden which already had pressed heavily upon his accused brother. If disappointment, reproach, and anguish of mind be punishment, can we say indeed that he had not been punished? Is it a small thing for a chief pastor of the Church to be held up before the Christian world as a dishonest man? To be charged, in three successive presentments, with a series of acts, appearing on the face of them fraudulent and deceptive? To have the many-tongued

press proclaiming from North to South, and from East to West, his alleged delinquencies? To be arraigned before his peers, on two occasions, and subjected to the immense sufferings consequent upon standing at their bar under serious accusations? To have all his pecuniary transactions, and even the privacy of his domestic life, exposed to the gaze of the multitude? And to be constrained to make at last an acknowledgment so unpleasant and mortifying? May not the Court, in disposing of the case, take into view the sharp mental agony that must have been preying for months and years upon their brother? May they not consider the distress and humiliation to which he has been already subjected? A presentment itself of a Christian minister, and especially of one so conspicuous and observed as a Bishop; the bringing of one invested with the sacred office as a criminal before a censorious, mocking world, is itself, however it may terminate, a fearful thing. What would have been the addition of a judicial censure to one already so sorely visited? That the conduct confessed was, to the minds of the Court, censurable, no one can doubt. The very requirement of the acknowledgment is evidence that they so regarded it. But in place of proceeding to a trial, they had consented to receive this acknowledgment. The infliction of a canonical penalty would have been extra-judicial and unauthorized, and might have been open to the charge of being illegal and oppressive. The Court trusted that the great end of justice had been attained. And, inasmuch as the Respondent had been for a long time subjected to extreme pain, inconvenience, suffering and reproach, by reason of the charges against him, and the several prosecutions instituted thereupon, might they not, in the termination of the case, act in the spirit of generosity, and forbear to add another burden to the weight under which he had been almost crushed?

7. And, finally, the undersigned was induced to concur with his brethren in the Court, by his earnest desire for the restoration of harmony to the Church. He was willing, for the sake of peace, to concede any thing but truth and justice, and he acted under the impression that the concession required fell short of such a sacrifice. That the desired result did flow from the conciliatory adjustment of this case, the recent General Convention affords striking evidence. On the last day of the session, the following resolution, proposed by the Rev. Dr. Stevens, was passed by the House of Delegates: "Resolved, that this House cannot close its session without humbly recording its fervent gratitude to Almighty God,

who alone maketh men to be of one mind, for the remarkable degree of harmony and Christian courtesy which have marked the proceedings of the Convention, and for the evidences of increased zeal in the work of church extension, manifested in the new impulse given to missionary labours by the election of two Bishops for the Pacific border."

The Christian Witness, in commenting upon the doings of the Convention, remarks:* "In view of what has been done, and especially in view of the truly Christian feeling which has been manifested by all parties, there is abundant cause for gratitude to God. The session might have been shorter, but could hardly have been more harmonious." "The fact that, notwithstanding the earnest and prolonged discussions, in which the members were singularly divided in their views, yet almost every important measure was passed with great unanimity, (the yeas and nays having been called but once or twice during the entire session,) and the disposition manifested, on all sides, to withdraw propositions which met with any very considerable opposition, in order so to modify them as to render them more acceptable to the house, proved that a spirit of peace and concord was animating the hearts and minds of the members, and which, we trust, was none other than that divine influence which was daily invoked."

That the action of the Court at Camden had very much to do with this pacific and Christian temper of the Convention, will scarcely be questioned. Had the Court proceeded to trial, and that trial been interrupted, as it would have been, by the session of the General Convention, who can doubt that the character of that Convention would have been widely different. Is there not every reason to suppose that, instead of being remarkable for mutual concession, kindly conference, and fraternal feeling, it would have been equally remarkable for strife and acrimony. Greatly was it to be apprehended that the bonds of Christian fellowship and brotherly love would have been so violently ruptured as scarce to admit of being reunited, and that the session would have been occupied with irritating and discordant debates, upon what would probably have been the most engrossing subject before them. That the conciliatory spirit which animated the last Convention will continue to shed its influence over the Church, is earnestly to be desired. Even if differences of opinion continue as broad as ever, it is exceeding gain to be able to meet and discuss them in the spirit of harmony

* Witness of November 4, 1853.

and mutual respect, and for members of the same Communion to take counsel together as brethren upon the great interests of the Church of Christ.

The undersigned has sought, by the above imperfect remarks, to present the view of this painful and perplexing case under which he himself acted, and which he has not since seen cause materially to change. If he could think that the benefits anticipated from the decision have been purchased, or the apprehended evils of a different course averted, by the sacrifice of principle, or the preference of expediency to right, he would most deeply regret the decision, and unite in pronouncing its condemnation. The late Episcopal Court, composed of frail and fallible men, may have erred; if so, time, the certain revealer of truth, will make manifest their error. But it is firmly believed that, in such event, it will also discover that the error was not inconsistent with honesty of purpose, and anxiety faithfully to discharge the important trust confided to them. Their aim was so to minister discipline, as to forget not mercy; to promote the repentance of an accused brother, rather than contribute to his ruin; and, without compromising truth and righteousness, to "follow the things which make for peace." Whether in this attempt they were justifiable, or whether they have been successful, must be for others than themselves to determine.

ALFRED LEE.

THE END.